

June 13, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Room TW-A325
Washington, D.C. 20554

**Re: Ex Parte Notice – Consolidated Application of EchoStar
Communications Corporation, General Motors Corporation and
Hughes Electronics Corporation for Authority to Transfer Control,
CS Docket No. 01-348**

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. §1.1206, EchoStar Communications Corporation ("EchoStar"), Hughes Electronics Corporation ("Hughes") and General Motors Corporation ("GM"), Applicants in the above-referenced merger proceeding, submit this letter to report that representatives of the Applicants met with members of the Commission staff on June 12, 2002.

Representatives of the Applicants present at the meeting included Mark Jackson, David Moskowitz, David Goodfriend, and Jim Stratigos of EchoStar; Scott McClatchey and Merrill Spiegel of DIRECTV, Inc. ("DIRECTV"); Pradman Kaul, Paul Gaske, Mike Cook and George Montague of Hughes Network Systems, Inc.; William Slowey of GM; and outside counsel for the Applicants. FCC staff members who attended the meeting included Marcia Glauberman, William Cox, and Rosalee Chiara of the Media Bureau; Jim Bird, Neil Dellar, Harry Wingo, and C. Anthony Bush of the Office of the General Counsel; David Sappington and Donald Stockdale of the Office of Plans and Policy; Julius Knapp and Rodney Small of the Office of Engineering and Technology; and JoAnn Lucanik, Marilyn Simon, and Mark Uretsky of the International Bureau.

The representatives of the Applicants made a presentation to the Commission staff addressing issues set forth in the attached written materials.¹ The meeting was focused on the broadband benefits to flow from the proposed merger of EchoStar and Hughes. The merger will allow New EchoStar to introduce a truly competitive full-scale consumer broadband service. Without the merger, neither company is likely to continue to offer such a service. Equally important, EchoStar and

¹ A copy of the presentation made by the Applicants is attached.

Hughes expect that New EchoStar will be able to offer that service at a competitive price point -- a target price of \$35 or lower for basic monthly broadband service, uniformly applied throughout the nation. This means that the merger will make broadband service available to the tens of millions of Americans who today do not have access to any attractive broadband alternative, will introduce competition in the Internet access market now dominated by cable operators, and will allow New EchoStar to counter effectively the video/broadband bundle that cable systems can offer today.

There is no truly competitive broadband satellite service today, notwithstanding the efforts made by both Hughes and EchoStar. The Hughes DIRECWAY service has a small number of subscribers. Hughes is unlikely to continue to fund its residential satellite broadband service without the merger. EchoStar, for its part, no longer markets satellite Internet access services -- Starband has filed for bankruptcy after spending approximately \$400 million and securing only 40,000 current subscribers.

One of the reasons why neither EchoStar nor Hughes can fulfill the broadband promise has to do with the intractable economics of residential broadband service by satellite. Without the merger, neither firm will likely have a large pool of subscribers to attain the scale -- about 5 million broadband subscribers -- required to reduce the price to the consumer and thereby effectively compete with cable and DSL broadband offerings. The lack of scale perpetuates a vicious circle of high equipment costs, high subscriber acquisition cost ("SAC"), high monthly service charges to recoup those costs, and a reluctance to finance such residential broadband offerings on the part of the investment community. Simply put, without scale, a residential satellite broadband service would likely continue to accumulate large losses for each subscriber gained, and would not effectively compete with cable or DSL service, whose costs are significantly lower and which can now offer higher data speeds.

In light of the economics of residential service and cash constraints, Hughes's SPACEWAY system is targeted at the enterprise market, which has traditionally been Hughes Network Systems' primary focus, is characterized by stable, long-term contracts, and has been a consistently profitable business on an EBITDA basis. The number of residential subscribers that the SPACEWAY system could accommodate (beyond the enterprise users) would not be enough to attain the required scale. Moreover, Hughes would still be constrained by DIRECTV's DBS subscriber base and low take rates. As a result, Hughes is unlikely to continue to offer residential broadband service without the merger.

While EchoStar has reached bundling agreements with certain incumbent Local Exchange Carriers, DSL bundling is a very unsatisfactory long-term option for

² One should also note that EchoStar is not in the enterprise market.

³ The economics assume a leased transporter is used. For a more detailed explanation, please see page 14 of the attached copy of the presentation.

several reasons. First of all, DSL is not available to all DBS subscribers, particularly those in rural areas. In such arrangements, the DBS provider is frequently unable to exercise control over price and customer service. Also, a number of factors such as the greater cost of DSL relative to cable modems, the problem of integrating in a bundle two products that are controlled by different entities and the difficulty that a DBS provider would face in attempting to roll out advanced services combine to make this option unattractive. DIRECTV's DSL experience -- the actual purchase of a competitive DSL provider -- similarly shows that the DSL bundle is not a long-term satisfactory solution. The DIRECTV DSL service has mustered only a limited number of subscribers.

The requirements for the Applicants to achieve a competitive residential broadband offering can therefore be satisfied only with the merger. The huge upfront investment may be justified only by an expectation of rapidly achieving scale -- five million residential broadband subscribers within five years from the start of operations. New EchoStar will have both the spectrum and the combined DBS subscriber base necessary to support such a ramp-up and to allow a residential broadband service at a competitive price. Specifically, the scale of 5 million subscribers will introduce a virtuous circle of more efficient utilization of satellite capacity, lower CPE costs, lower SAC, lower upfront costs for the consumer and a lower monthly charge, with a target price of \$35 or lower per month. These forecasts are consistent with historical data showing, for example, that the price of the calls DOCSIS modem underwent a dramatic reduction as scale was achieved, and the price of Ku-band equipment has similarly dropped decisively with volume.

One copy of this *ex parte* notice is being filed electronically with the Commission. If you have questions concerning this notice, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

Gary M. Epstein
John P. Janka
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Washington, D.C. 20004
(202) 637-2200

/s/

Pantelis Michalopoulos
Philip L. Malet
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(202) 429-6494

⁴ Underlying this discussion is the premise that in order for a satellite broadband service to compete with cable and DSL, it must be Ka.

Marlene H. Dortch

June 13, 2002

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*Counsel for Hughes Electronics
Corporation and General Motors
Corporation*

*Counsel for EchoStar Communications
Corporation*

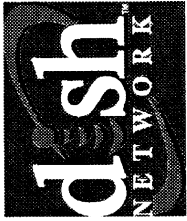
Marlene H. Dortch

June 13, 2002

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Attachment

cc (w/att.): Marcia Glauberman
William Cox
Rosalee Chiara
Jim Bird
Neil Dellar
Harry Wingo
C. Anthony Bush
David Sappington
Donald Stockdale
Julius Knapp
Rodney Small
JoAnn Lucanik
Marilyn Simon
Mark Uretsky
Qualex International



DIRECTWAY

Federal Communications Commission Broadband Presentation

June 2002

REDACTED -- FOR PUBLIC
INSPECTION



Presenters

DIRECTWAY

- Mark Jackson - Sr. VP, EchoStar
- Pradman Kaul - Chairman and CEO, Hughes
Network Systems, Inc.



Agenda

DIRECTWAY

- Overview
- No Current Competitive Satellite Broadband
- Requirements to Achieve a Competitive Offering
- Merger Efficiencies
- Competitive Benefits



Merger Provides Important Benefits: Broadband to Consumers

DIRECTV

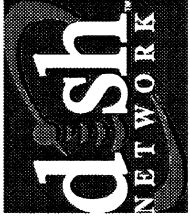
- Access to affordable broadband service to all Americans, including those in rural areas
- Meaningful competitive alternative to cable and DSL consumer broadband services
- Meaningful competitive alternative to the bundled offerings of cable



Standing Alone, EchoStar and Hughes Cannot Fulfill the Broadband Promise

DIRECWAY

- Without the merger, neither firm could reach scale
 - Smaller standalone DBS subscriber bases
 - Limited spectrum
- Without scale, consumers face:
 - High equipment costs
 - High monthly service charges
- Without scale, a service provider faces:
 - Large SAC, marketing, space segment, and ground infrastructure investment required without the possibility for an adequate return
- Unsupportive financial climate
- The merger makes possible the major investment required to create an affordable satellite broadband offering



Business Overview

DIRECWAY

- Hughes has two residential Internet access services
 - DIRECWAY satellite broadband (about [redacted] subscribers)
 - DIRECTV DSL (reseller) (about [redacted] subscribers)
- Hughes is unlikely to continue to fund its residential satellite broadband service without the merger
- Hughes' SPACEWAY enterprise service expected to launch in 2004



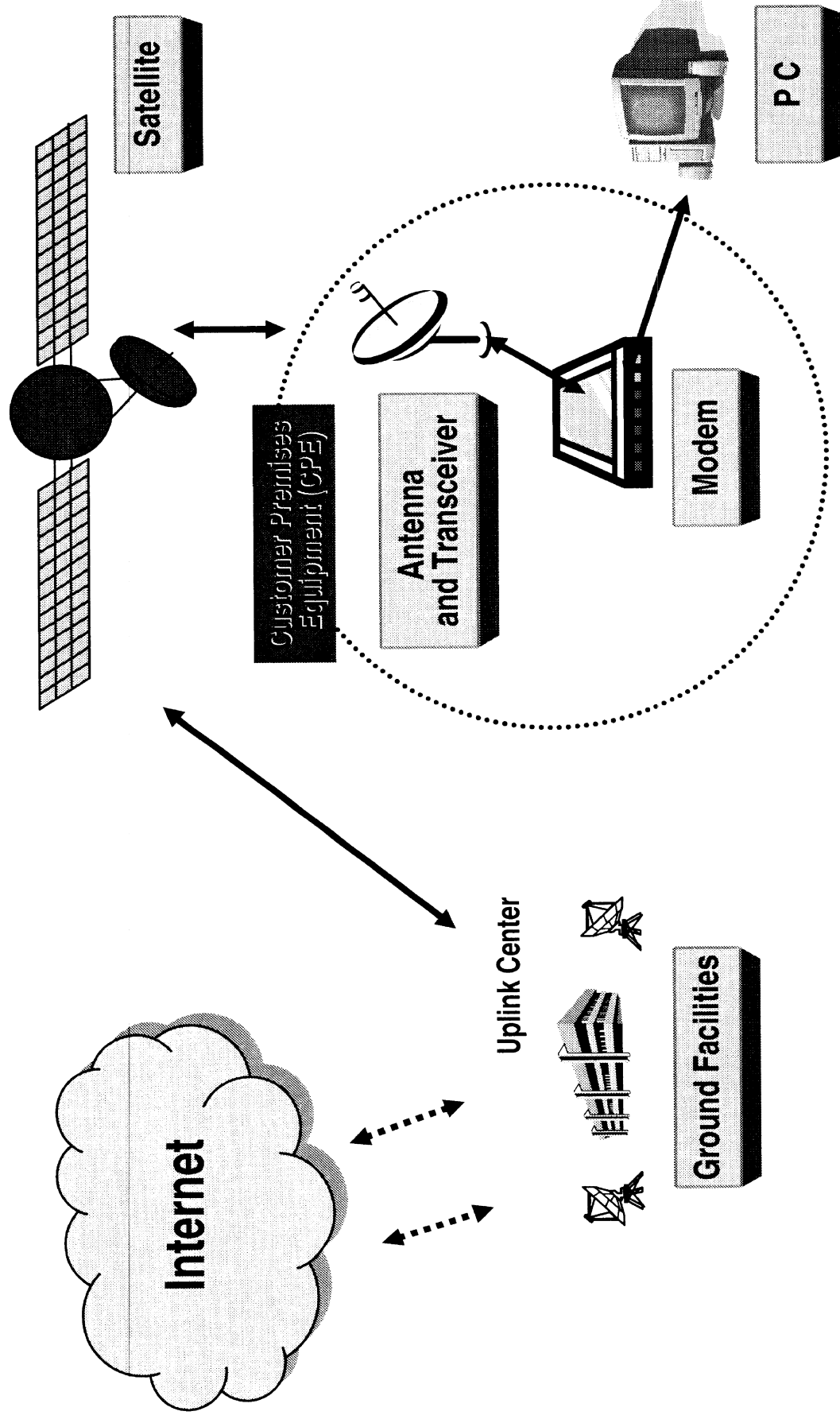
Business Overview

DIRECTWAY

- EchoStar no longer markets satellite Internet access services
 - StarBand marketing relationship terminated; StarBand has filed for Chapter 11 bankruptcy
 - Approximately 40,000 current subscribers, after spending approximately \$400,000,000
- Limited DSL marketing agreements with SBC and Earthlink (no subscribers to date)

Technical Overview

DiRECTWAY





Spectrum Efficiency & Coverage



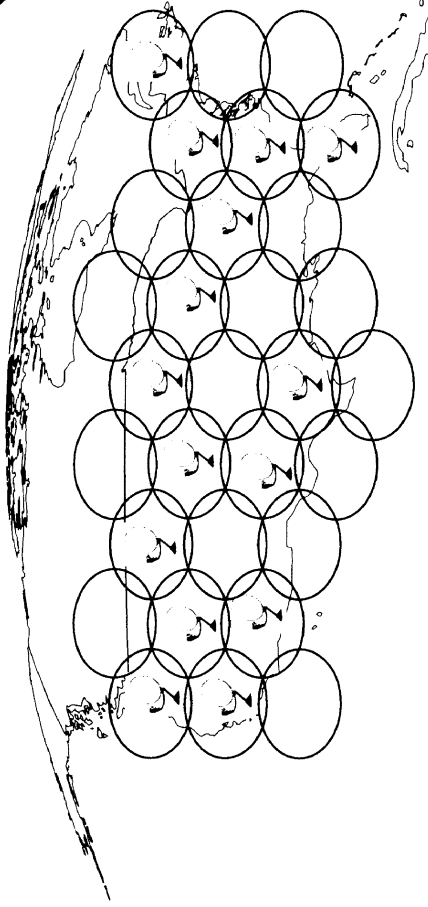
Ku CONUS

- Spectral Efficiency x 1
No. Residential Subscribers ~ 250K



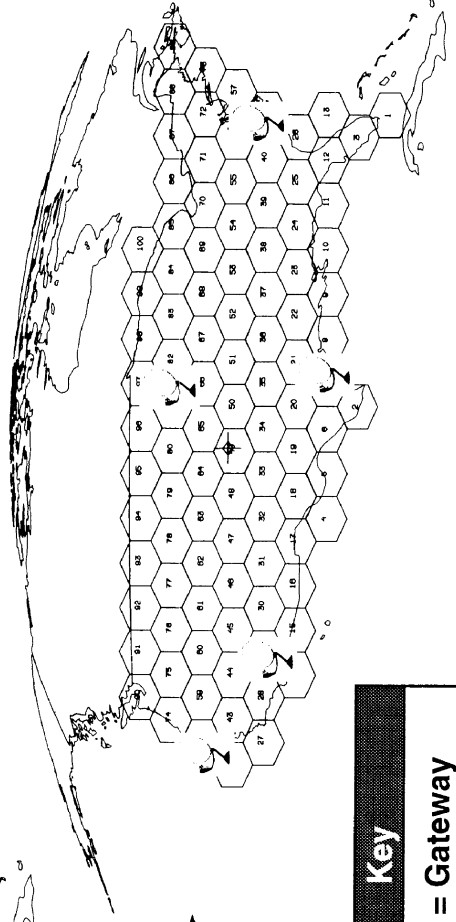
Bent-Pipe Ka Spot Beam

- Spectral Efficiency x 4
No. Residential Subscribers ~ 1M



SPACEWAY Processor-based

- Spectral Efficiency x 8.5
No. Residential Subscribers ~ 1 - 1.3M
plus [redacted] Enterprise Subscribers



Key

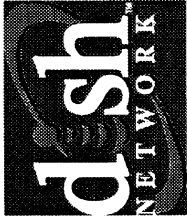
 = Gateway



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Why Satellite Broadband Is Not Competitive Today

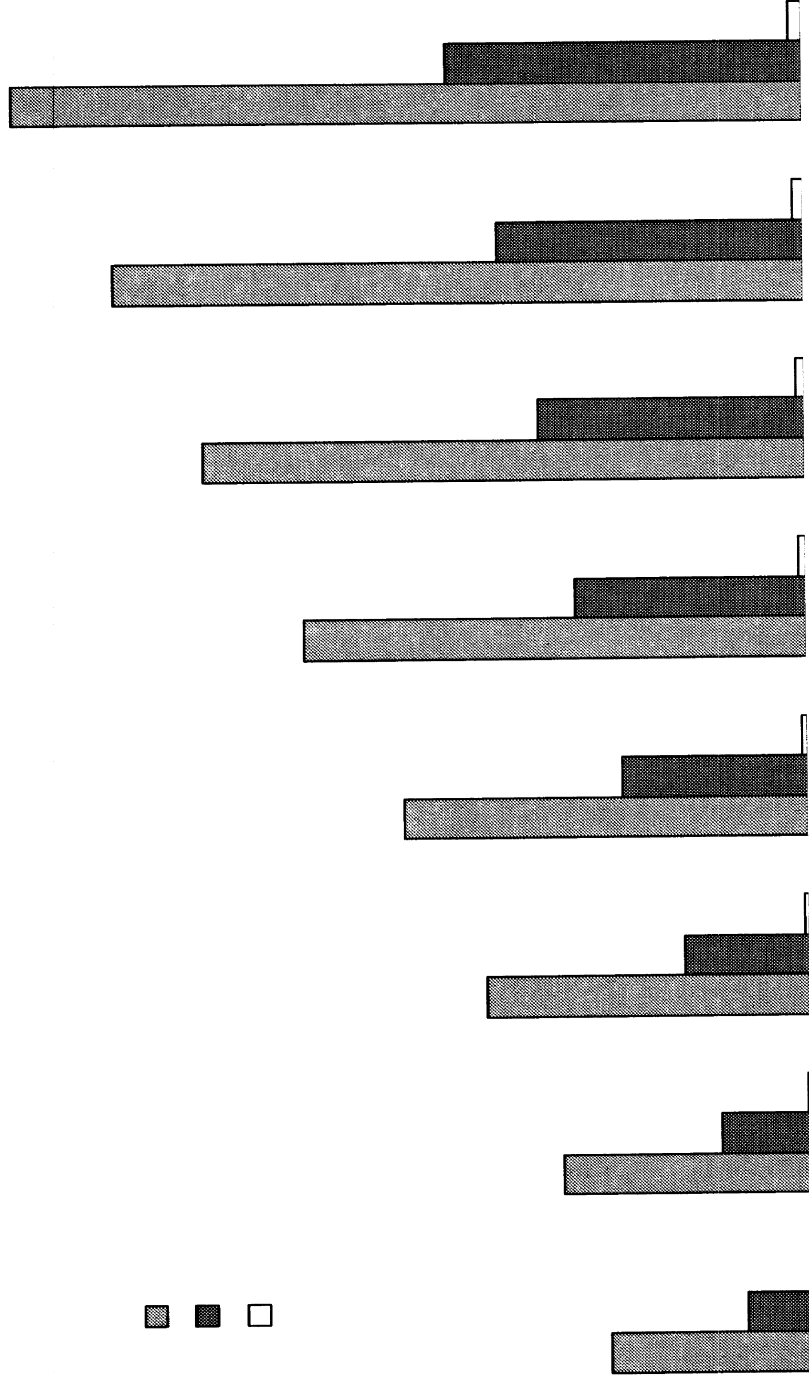
DIRECWAY

	<u>Ku-Band CONUS</u>	<u>Cable</u>	<u>DSL</u>
Manufacturing & Installation Costs			
Antenna / Transceiver	\$275-\$400	N/A	N/A
Modem	\$225-\$375	\$75	\$75
Installation	\$150-\$300	Self-install	Self-Install
Typical Monthly Fee	\$60-\$70	\$50	\$50
Typical Installed CPE Price	\$600-700	\$0-\$100	\$0-\$100
Typical Speeds (kbps)	[redacted]	1250/128	384-768/128



Consumer Broadband Growth

DIRECTV



Source: NCTA, TeleChoice, Hughes & EchoStar



Current SAC

DIRECTWAY

(Approximate)

Total Expenses	
(includes retail commission and marketing)	[\$redacted]
Customer Payment	- \$600
SAC	[\$redacted]



Today's Satellite Broadband Economics

DIRECTVWAY

(Approximate)

Monthly Subscriber Fee \$60

Monthly Space Segment Costs \$[redacted]

Other Monthly Costs¹ \$[redacted]
Monthly Margin \$[redacted]

Churn ([redacted]% of \$[redacted]
SAC) \$[redacted]

Monthly Loss per Sub \$[redacted]

Note: Economics assume leased transponder

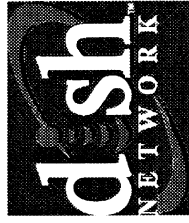
¹ Includes billing, collections, call center, service/warranty, etc.



DIRECWAY

DIRECWAY

- Absent the merger, Hughes is unlikely to continue its investment in consumer Internet access
 - Cash constraints
 - Poor economics because of scale



SPACEWAY Targets Enterprise Markets

DIRECTWAY

- SPACEWAY is conceived for and targeted at the Enterprise market
- Enterprise market has traditionally been HNS's primary focus
 - Global, profitable business
 - Sales consistently over \$500 million with double-digit EBITDA profitability
- Enterprise market characteristics
 - Significant & steady long-term growth
 - VSAT market 3-year CAGR “remained remarkably stable since 1990 and has averaged about 15% since 1992.” *
 - Stable, long-term contracts (5-year norm)
 - Low SAC

* COMSYS 2001



Enterprise Focus Limits Residential Service

DIRECTV

- Concurrent business/residential use
- [redacted]
- Total consumer support limited by available capacity during business PBH [redacted]
- Assumptions relating to concurrent usage populations, online time and bandwidth needs are highly variable
- Consumer capacity estimated at 1 – 1.3M users per satellite

Peak Busy Hour
Capacity loading

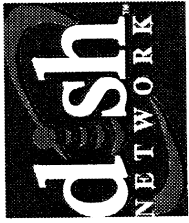
(Usable end user capacity, excludes system overhead)



Disadvantages of Ku-band for Consumer Satellite Broadband

DIRECTV

- Current Ku-band FSS spacecraft not optimized for broadband
 - Do not meet growing bandwidth and performance needs of broadband users
 - Low power (EIRP density) levels constrain transmission speeds
 - Expensive to lease capacity from third party satellite operators
- Difficult to obtain sufficient capacity on the same spacecraft or within given part of the orbital arc
- Possible interference with adjacent satellites; multiple satellites will require coordination with adjacent operators
- Ku service requires larger antenna



No Ka-Band Consumer Satellite Network Has Been Implemented Over the U.S

DIRECTV

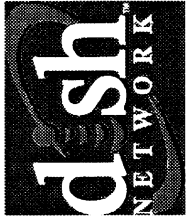
- Since 1997, FCC has granted Ka-band licenses to more than 14 companies in addition to Hughes and EchoStar, including Lockheed Martin, Motorola, and Loral
- To date, no one in the U.S. has launched a commercial Ka-band satellite, and future plans are uncertain given financial climate and limited scale



DSL Bundle Disadvantages

DIRECTV

- DSL not available to all DBS subscribers
- DSL bundle (with RBOCs) does not allow total control over price or customer relationship – especially customer service
- DSL more expensive than cable modem in many areas
- Difficult/expensive to develop advanced services or differentiated content, or to integrate with video
- RBOCs are potential competitors in video business



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To Achieve Competitive Consumer Satellite Broadband

DIRECTWAY

- Approximately \$[redacted] must be invested in higher capacity, higher speed satellites and ground infrastructure
- Over \$[redacted] must be invested in SAC alone
- Over \$[redacted] must be invested in marketing
- These major upfront investments can be justified only by the expectation of rapidly achieving a viable customer base -- estimated to be 5 million residential subscribers within 5 years from start of operations



SPACEWAY Investment

DIRECTWAY

- Hughes has spent \$1.2 billion for SPACEWAY and will spend another \$600 million to create an enterprise-focused business
 - without an existing VSAT customer base, the cost would be even higher and risk would be even greater
 - **[redacted]**



No Path to Affordable Consumer Satellite Broadband Without Merger

DIRECTWAY

Standing alone, neither company could:

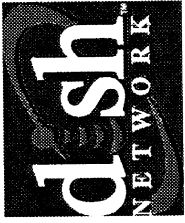
- Have a sufficiently large, fast-growing DBS subscriber base to achieve the necessary broadband subscriber ramp rate and to achieve economies of scale in CPE
- Justify the required investment in additional satellites, SAC, marketing without assurance of minimum scale
- Finance the billions of dollars in SAC investment needed to achieve minimum scale without high probability of achieving scale fast enough to recoup its investment
- Have enough Ka-band orbital slots near video slots to support the minimum scale for consumer service



Consumers Suffer Without Competitive Satellite Broadband

DIRECTV

- Cable companies currently dominant
- Digital Divide: Many Americans with no access to cable modem service or DSL have no affordable broadband option
- Decreased broadband competition
- Decreased MVPD competition



Harm to MVPD Competition

- Cable is bundling video and broadband, further entrenching its position in both markets
- Cable is directly targeting DBS customers with its cable modem bundle
- DBS cannot match cable firms' bundles and ties, or integrate data and video for on-demand services, reducing DBS's price and innovation pressure on cable



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Transaction Creates a Meaningful Competitor

DIRECTV

- Merger gives New EchoStar the critical mass of current and potential subscribers to reach 5 million subscribers in 5 years, allowing prices and service that are competitive with terrestrial broadband
- Rapid ramp-up:
 - Reduces CPE costs
 - Utilizes satellite capacity and lower per-subscriber space costs
 - Achieves efficient installation, billing, and customer service operations



Combined, Growing DBS Subscriber Base Key to Achieving Scale

DIRECTV

- Large, growing DBS customer base justifies large upfront investment in risky climate (i.e., already in the home)
- DBS subscribers are most likely candidates to purchase satellite broadband
 - Familiar with benefits of satellite technology
 - Proved willing to install satellite dish, and have required view of southern sky
 - Cable subscribers have high propensity to choose cable modem service (path of least resistance)



Combined DBS Base and Faster Growth Allows Broadband Scale

DIRECTWAY

Residential Broadband Growth from Merger: Combined DBS Base +
Expansion from New DBS Services & Lower Prices

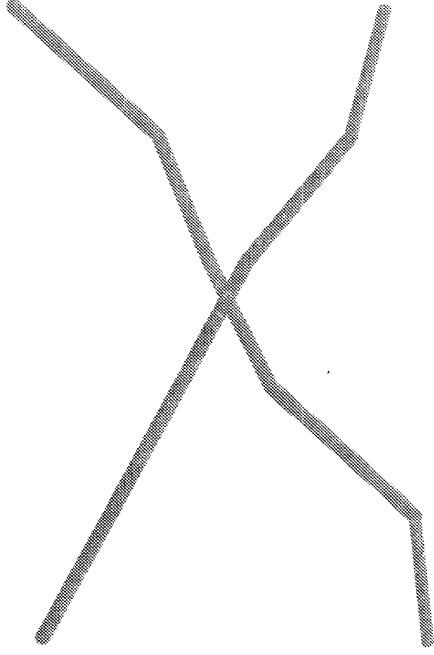
[redacted]



CPE Cost Significantly Declines With Fast Ramp Up to Scale

DIRECTV

- Fast ramp-up to scale necessary to reduce cost of CPE
- CPE costs can be reduced with scale. Rapid ramp-up allows forward pricing.
- Compare decreasing cable modem costs:



=

Source:

Cabledatamnews.com

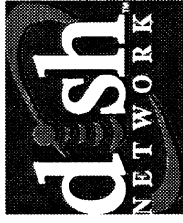


CPE Costs Drop with Volume

DIRECTV

Ku Single LNBF Price/Volume Trend

[redacted]



Projected Ka-band CPE Costs vs Volume

DIRECTWAY

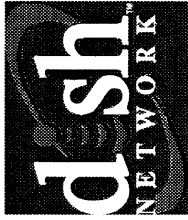
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Importance of Rapid CPE Price Reduction

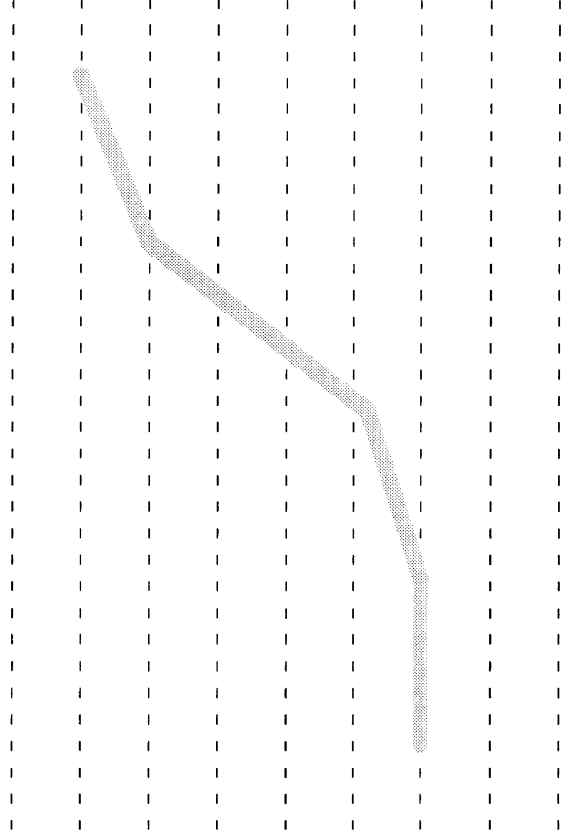
DIRECTV

[redacted]



Consumer Take Rates Higher As Prices Decrease

DIRECTWAY



Source:
McKinsey/J.P.
Morgan



SPACEWAY Post Merger

DIRECTWAY

- SPACEWAY satellites planned to launch in 2003 and 2004
- Combined DBS subscriber base would allow investment in SAC and marketing to leverage SPACEWAY investment into a Ka-band residential service starting in mid-2004
- SPACEWAY's capabilities would allow higher speed service with premium features like video conferencing
- With scale-driven CPE costs, can compete with cable and DSL for premium consumers



Additional Satellites

DIRECTV

- CPE scale economies would allow expected growth to justify investment in additional satellites
- Could be ready for service in 2005, sooner if under-construction satellite can be secured
- Additional satellites would allow lower-priced service, reaching below a target of \$35 per month for basic service
- Potential orbital locations: 103 (PanAmSat*), 113 (VisionStar), 121 (replacing EchoStar IX)

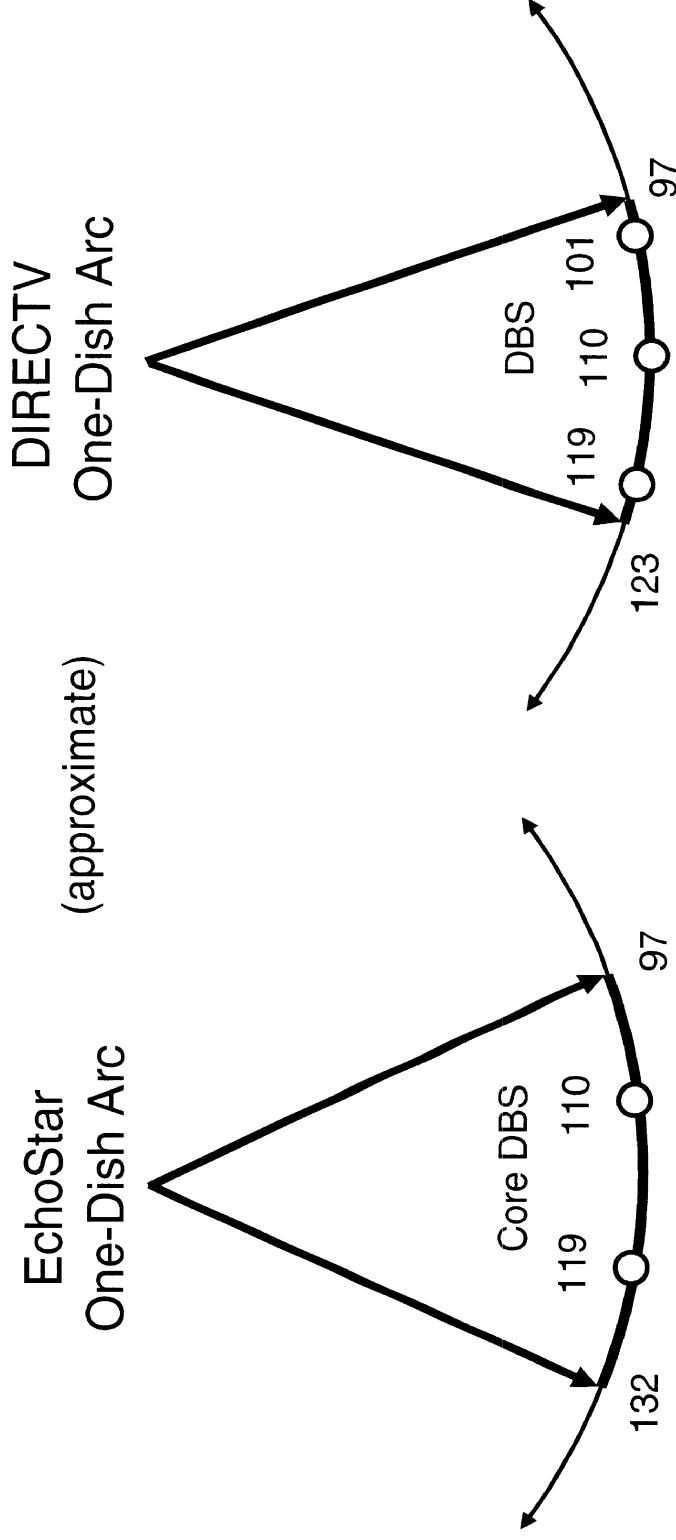
* Requires change in system design

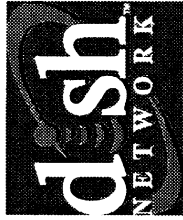


Spectrum Limitations: The One-Dish Arc

DIRECTV

- Only orbital locations within approximately 22 degrees of the core DBS location(s) allow for broadband and DBS service to a single dish.





FCC Ka-Band Authorizations



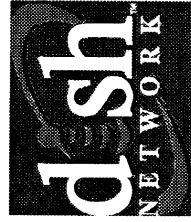
EchoStar's Potential One-Dish Ka-Band Orbital Authorizations

Orbital Location	Usable Capacity for Broadband
103 (from PanAmSat)*	500 MHz
113 (from VisionStar)**	500 MHz
121 (replaces EchoStar IX)	500 MHz

Total Residential Subscriber Capacity:
3.0 million subscribers

*To be acquired by EchoStar independent of Hughes transaction ** FCC extension requested

Insufficient to Reach Scale



FCC Ka-Band Authorizations

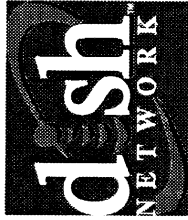
DIRECTV

Hughes's Potential One-Dish Orbital Authorizations

Orbital Location	Useable Capacity for Broadband
99	500 MHz
101	500 MHz

Total Residential Subscriber Capacity:
2.0 to 2.6 million subscribers

Insufficient to Reach Scale

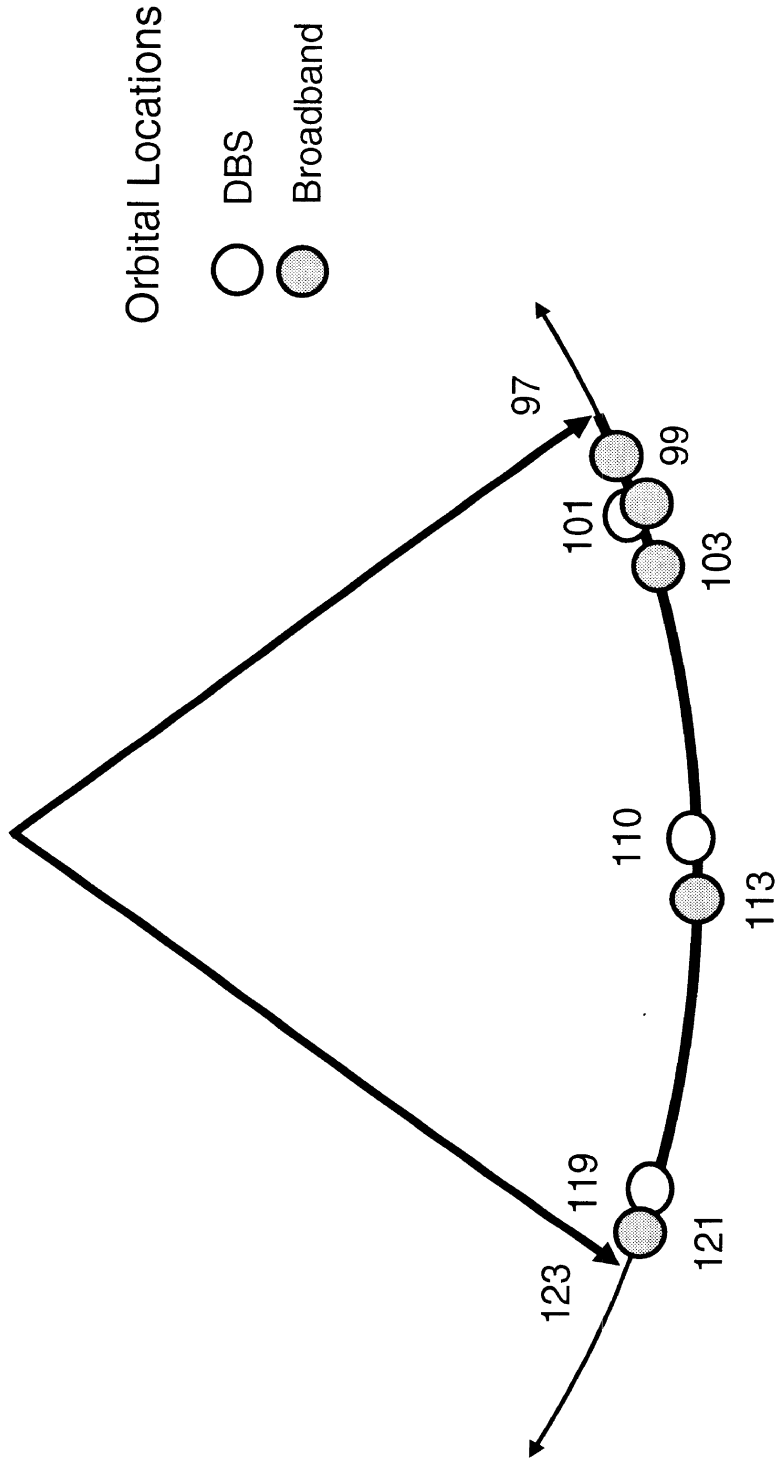


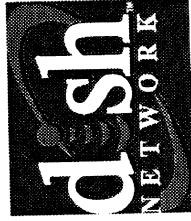
FCC Ka-Band Authorizations



New EchoStar Would Have Enough One-Dish Orbital Authorizations to Reach Scale

One-Dish Arc





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Competitive Benefits

DIRECTWAY

- Bridge digital divide
- Lower prices, increased deployment of consumer broadband service
- Encourage innovation in satellite and complementary technologies
- Encourage broadband content development
- Increase broadband competition
- Increase MVPD competition



Digital Divide

DIRECTWAY

- About 40 million households currently unserved by cable modem or DSL
- Satellite broadband is “especially promising for serving remote areas....[However, the] high fixed start-up cost represents a substantial risk and has been prohibitively expensive for many companies to consider.” -- USDA/Commerce Dep’t
- The merger will lower the price of satellite broadband to where many more consumers will be able to afford it
- Affordable broadband available to homes, schools, and businesses across the country



Increased Broadband Competition

DIRECTV

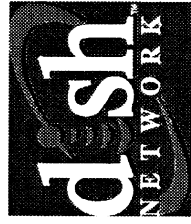
- Effective, facility-based competition with cable modem and DSL technology
 - Comparable price/performance
 - Available across all of America
- Competitive constraint on cable and DSL providers' pricing and service



More Broadband Use and Content

DIRECTWAY

- Allows for rapid deployment of more innovative service integrating video and Internet platforms. Since satellite is a national platform, this will happen more quickly with a viable satellite broadband offering.
- Provides larger audience for new applications and other broadband content
 - Video conferencing
 - Multicasting Internet content
 - Telemedicine and other healthcare applications
 - Distance learning



Increased MVPD Competition

DIRECTV

- If DBS cannot match the cable operators' video/broadband bundle, DBS's growth and competitiveness will suffer, especially with premium customers.
- Satellite broadband allows effective competition with the bundle, and promotes a more competitive MVPD market.

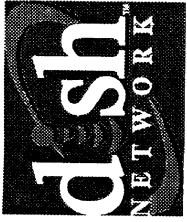


Importance of Meeting Competition from Cable Modem Bundles

DIRECTWAY

DBS-Broadband Bundle Allows Continued DBS Growth

[redacted]



Conclusion

DIRECTV

- Hughes and EchoStar alone cannot reach the scale necessary to create a robust consumer satellite broadband business
- Only New EchoStar can create an affordable, nationwide consumer satellite broadband platform
- New EchoStar establishes the first broadband provider in underserved America
- New EchoStar establishes and intensifies competition in areas served by cable/DSL